

## CHAPTER 106

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**INSURANCE**


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**HOUSE BILL 20-1158**

BY REPRESENTATIVE(S) Tipper and Herod, Buckner, Caraveo, Coleman, Cutter, Duran, Esgar, Exum, Froelich, Garnett, Gonzales-Gutierrez, Gray, Hooton, Jackson, Kennedy, Kipp, McCluskie, McLachlan, Melton, Michaelson Jenet, Mullica, Roberts, Singer, Sirota, Snyder, Sullivan, Titone, Valdez A., Valdez D., Weissman, Woodrow, Jaquez Lewis; also SENATOR(S) Winter and Fenberg, Danielson, Fields, Ginal, Hansen, Lee, Moreno, Pettersen, Story, Todd, Williams A.

**AN ACT**

**CONCERNING INSURANCE COVERAGE FOR INFERTILITY, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.**

*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1. Short title.** The short title of this act is the "Colorado Building Families Act".

**SECTION 2.** In Colorado Revised Statutes, 10-16-104, **add** (23) as follows:

**10-16-104. Mandatory coverage provisions - definitions - rules.**  
**(23) Infertility diagnosis and treatment - fertility preservation services.**  
 (a) EXCEPT AS PROVIDED IN SUBSECTION (23)(e) OF THIS SECTION AND SUBJECT TO SUBSECTION (23)(f) OF THIS SECTION, ALL INDIVIDUAL AND GROUP HEALTH BENEFIT PLANS ISSUED OR RENEWED IN THIS STATE SHALL PROVIDE COVERAGE FOR THE DIAGNOSIS OF AND TREATMENT FOR INFERTILITY AND STANDARD FERTILITY PRESERVATION SERVICES.

(b) THE COVERAGE REQUIRED BY THIS SUBSECTION (23) INCLUDES THREE COMPLETED OOCYTE RETRIEVALS WITH UNLIMITED EMBRYO TRANSFERS IN ACCORDANCE WITH THE GUIDELINES OF THE ASRM, USING SINGLE EMBRYO TRANSFER WHEN RECOMMENDED AND MEDICALLY APPROPRIATE.

(c) THE HEALTH BENEFIT PLAN SHALL NOT IMPOSE:

(I) ANY EXCLUSIONS, LIMITATIONS, OR OTHER RESTRICTIONS ON COVERAGE OF FERTILITY MEDICATIONS THAT ARE DIFFERENT FROM THE EXCLUSIONS, LIMITATIONS,

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*Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.*

OR OTHER RESTRICTIONS IMPOSED ON ANY OTHER PRESCRIPTION MEDICATIONS COVERED UNDER THE HEALTH BENEFIT PLAN; OR

(II) DEDUCTIBLES, COPAYMENTS, COINSURANCE, BENEFIT MAXIMUMS, WAITING PERIODS, OR OTHER LIMITATIONS ON COVERAGE FOR THE DIAGNOSIS OF AND TREATMENT FOR INFERTILITY AND STANDARD FERTILITY PRESERVATION SERVICES, EXCEPT AS OTHERWISE SPECIFIED IN THIS SUBSECTION (23), THAT ARE DIFFERENT FROM DEDUCTIBLES, COPAYMENTS, COINSURANCE, BENEFIT MAXIMUMS, WAITING PERIODS, OR OTHER LIMITATIONS IMPOSED ON BENEFITS FOR SERVICES COVERED UNDER THE HEALTH BENEFIT PLAN THAT ARE NOT RELATED TO INFERTILITY.

(d) THE COMMISSIONER SHALL ADOPT RULES CONSISTENT WITH AND AS ARE NECESSARY TO IMPLEMENT THIS SUBSECTION (23).

(e) A RELIGIOUS EMPLOYER MAY REQUEST AND A CARRIER SUBJECT TO THIS SUBSECTION (23) SHALL GRANT AN EXCLUSION FROM THE COVERAGE REQUIRED UNDER THIS SUBSECTION (23) IN A HEALTH BENEFIT PLAN IF THE REQUIRED COVERAGE CONFLICTS WITH THE RELIGIOUS ORGANIZATION'S BONA FIDE RELIGIOUS BELIEFS AND PRACTICES. A RELIGIOUS EMPLOYER THAT OBTAINS AN EXCLUSION UNDER THIS SUBSECTION (23)(e) SHALL PROVIDE ITS EMPLOYEES REASONABLE AND TIMELY NOTICE OF THE EXCLUSION OF THE COVERAGE DESCRIBED IN THIS SUBSECTION (23) FROM THE HEALTH BENEFIT PLAN THE RELIGIOUS EMPLOYER OFFERS TO ITS EMPLOYEES.

(f) (I) WITHIN ONE HUNDRED TWENTY DAYS AFTER THE EFFECTIVE DATE OF THIS SUBSECTION (23), THE DIVISION SHALL SUBMIT TO THE FEDERAL DEPARTMENT OF HEALTH AND HUMAN SERVICES ITS DETERMINATION AS TO WHETHER THE COVERAGE SPECIFIED IN THIS SUBSECTION (23) IS IN ADDITION TO ESSENTIAL HEALTH BENEFITS AND WOULD BE SUBJECT TO DEFRAID BY THE STATE PURSUANT TO 42 U.S.C. SEC. 18031 (d)(3)(B) AND A REQUEST THAT THE FEDERAL DEPARTMENT CONFIRM THE DIVISION'S DETERMINATION WITHIN SIXTY DAYS AFTER RECEIPT OF THE DIVISION'S REQUEST AND SUBMISSION OF ITS DETERMINATION.

(II) THIS SUBSECTION (23) APPLIES TO HEALTH BENEFIT PLANS ISSUED OR RENEWED IN THIS STATE THAT ARE SUBJECT TO THIS SUBSECTION (23), AND THE DIVISION SHALL IMPLEMENT THE REQUIREMENTS OF THIS SUBSECTION (23), IF:

(A) THE DIVISION RECEIVES CONFIRMATION FROM THE FEDERAL DEPARTMENT OF HEALTH AND HUMAN SERVICES THAT THE COVERAGE SPECIFIED IN THIS SUBSECTION (23) DOES NOT CONSTITUTE AN ADDITIONAL BENEFIT THAT REQUIRES DEFRAID BY THE STATE PURSUANT TO 42 U.S.C. SEC. 18031 (d)(3)(B); OR

(B) MORE THAN THREE HUNDRED SIXTY-FIVE DAYS HAVE PASSED SINCE THE DIVISION SUBMITTED ITS DETERMINATION AND REQUEST FOR CONFIRMATION THAT THE COVERAGE SPECIFIED IN THIS SUBSECTION (23) IS NOT AN ADDITIONAL BENEFIT THAT REQUIRES STATE DEFRAID PURSUANT TO 42 U.S.C. SEC. 18031 (d)(3)(B), AND THE FEDERAL DEPARTMENT OF HEALTH AND HUMAN SERVICES HAS FAILED TO RESPOND TO THE REQUEST WITHIN THAT PERIOD, IN WHICH CASE THE DIVISION SHALL CONSIDER THE FEDERAL DEPARTMENT'S UNREASONABLE DELAY A PRECLUSION FROM REQUIRING DEFRAID BY THE STATE.

(g) FOR PURPOSES OF THIS SUBSECTION (23):

(I) "ACOG" MEANS THE AMERICAN COLLEGE OF OBSTETRICIANS AND GYNECOLOGISTS OR ITS SUCCESSOR ORGANIZATION.

(II) "ASCO" MEANS THE AMERICAN SOCIETY OF CLINICAL ONCOLOGY OR ITS SUCCESSOR ORGANIZATION.

(III) "ASRM" MEANS THE AMERICAN SOCIETY FOR REPRODUCTIVE MEDICINE OR ITS SUCCESSOR ORGANIZATION.

(IV) "DIAGNOSIS OF AND TREATMENT FOR INFERTILITY" MEANS THE PROCEDURES AND MEDICATIONS RECOMMENDED BY A LICENSED PHYSICIAN THAT ARE CONSISTENT WITH ESTABLISHED, PUBLISHED, OR APPROVED MEDICAL PRACTICES OR PROFESSIONAL GUIDELINES FROM ACOG OR ASRM FOR DIAGNOSING AND TREATING INFERTILITY.

(V) "FAILURE TO IMPREGNATE OR CONCEIVE" MEANS THE FAILURE TO ESTABLISH A CLINICAL PREGNANCY AFTER TWELVE MONTHS OF REGULAR, UNPROTECTED SEXUAL INTERCOURSE OR THERAPEUTIC DONOR INSEMINATION FOR A WOMAN UNDER THE AGE OF THIRTY-FIVE, OR AFTER SIX MONTHS OF REGULAR, UNPROTECTED SEXUAL INTERCOURSE OR THERAPEUTIC DONOR INSEMINATION FOR A WOMAN THIRTY-FIVE YEARS OF AGE OR OLDER. CONCEPTION RESULTING IN A MISCARRIAGE DOES NOT RESTART THE TWELVE-MONTH OR SIX-MONTH CLOCK TO QUALIFY AS HAVING INFERTILITY.

(VI) "INFERTILITY" MEANS A DISEASE OR CONDITION CHARACTERIZED BY:

(A) THE FAILURE TO IMPREGNATE OR CONCEIVE;

(B) A PERSON'S INABILITY TO REPRODUCE EITHER AS AN INDIVIDUAL OR WITH THE PERSON'S PARTNER; OR

(C) A LICENSED PHYSICIAN'S FINDINGS BASED ON A PATIENT'S MEDICAL, SEXUAL, AND REPRODUCTIVE HISTORY, AGE, PHYSICAL FINDINGS, OR DIAGNOSTIC TESTING.

(VII) "LICENSED PHYSICIAN" MEANS A PERSON LICENSED BY THE COLORADO MEDICAL BOARD PURSUANT TO ARTICLE 240 OF TITLE 12 TO PRACTICE MEDICINE IN THIS STATE.

(VIII) "STANDARD FERTILITY PRESERVATION SERVICES" MEANS PROCEDURES AND SERVICES THAT ARE CONSISTENT WITH ESTABLISHED MEDICAL PRACTICES OR PROFESSIONAL GUIDELINES PUBLISHED BY ASRM OR ASCO FOR A PERSON WHO HAS A MEDICAL CONDITION OR IS EXPECTED TO UNDERGO MEDICATION THERAPY, SURGERY, RADIATION, CHEMOTHERAPY, OR OTHER MEDICAL TREATMENT THAT IS RECOGNIZED BY MEDICAL PROFESSIONALS TO CAUSE A RISK OF IMPAIRMENT TO FERTILITY.

**SECTION 3. Appropriation.** For the 2020-21 state fiscal year, \$3,337 is appropriated to the department of regulatory agencies for use by the division of insurance. This appropriation is from the division of insurance cash fund created in

section 10-1-103 (3), C.R.S., and is based on an assumption that the division will require an additional 0.1 FTE. To implement this act, the division may use this appropriation for personal services.

**SECTION 4. Applicability.** This act applies to health benefit plans issued or renewed on or after January 1, 2022.

**SECTION 5. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety.

Approved: April 1, 2020